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HOUSE BILL 238

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

RELATING TO TAXATION; ENACTING THE SOFT DRINK TAX ACT; MAKING
DISTRIBUTIONS; CREATING A FUND; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 9 of this act may be cited as the "Soft Drink Tax Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Soft Drink Tax Act:

A. "department" means the taxation and revenue
department, the secretary of taxation and revenue or any
employee of the department exercising authority lawfully
delegated to that employee by the secretary;

B. "soft drink" means a nonalcoholic flavored
beverage containing any sweetener additive, such as corn
fructose, sugar or aspartame, and includes:

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1 (1) ginger ale and colas or drinks commonly
2 referred to as soft drinks;

3 (2) any fruit or vegetable drink containing
4 less than fifty percent natural fruit or vegetable juice; and

5 (3) any package or container of syrup,
6 concentrate, powder or other base product intended for mixing
7 to produce a liquid soft drink; and

8 C. "wholesaler" means a person who sells any soft
9 drink for resale in New Mexico.

10 Section 3. [NEW MATERIAL] IMPOSITION AND RATE OF SOFT
11 DRINK TAX.--An excise tax to be known as the "soft drink tax"
12 is imposed on any wholesaler who sells soft drinks as follows:

13 A. one cent (\$.01) for each twelve fluid ounces of
14 soft drink sold in New Mexico;

15 B. sixty-four cents (\$.64) per gallon of soft drink
16 syrup or concentrate sold in New Mexico; and

17 C. on the sale of a package or container of soft
18 drink powder or other base product, ten and six tenths cents
19 (\$.106) per gallon of soft drink that may be produced from each
20 package or container according to the manufacturer's
21 directions.

22 Section 4. [NEW MATERIAL] DEDUCTIONS.--A wholesaler may
23 deduct the value of soft drinks sold and shipped to a person in
24 another state from the units of soft drinks subject to the tax
25 imposed by the Soft Drink Tax Act; provided that the department

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1 may require the wholesaler to submit evidence satisfactory to
2 the department that the units have been sold and shipped to a
3 person in another state.

4 Section 5. [NEW MATERIAL] EXEMPTIONS.--Exempt from the
5 tax imposed by the Soft Drink Tax Act are soft drinks sold to
6 or by any instrumentality of the armed forces of the United
7 States engaged in resale activities.

8 Section 6. [NEW MATERIAL] DATE PAYMENT DUE.--The tax
9 imposed by the Soft Drink Tax Act shall be paid on or before
10 the twenty-fifth day of the month following the month in which
11 the taxable event occurs.

12 Section 7. [NEW MATERIAL] REFUND OR CREDIT OF TAX.--The
13 department shall allow a claim for refund or credit as provided
14 in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by
15 the Soft Drink Tax Act and paid on soft drinks or soft drink
16 syrup, concentrate, powder or other base product destroyed in
17 shipment, spoiled or otherwise damaged so as to be unfit for
18 sale or consumption, upon submission of proof satisfactory to
19 the department of such destruction, spoilage or damage.

20 Section 8. [NEW MATERIAL] INTERPRETATION OF ACT--
21 ADMINISTRATION AND ENFORCEMENT OF TAX.--

22 A. The department shall interpret the provisions of
23 the Soft Drink Tax Act.

24 B. The department shall administer and enforce the
25 collection of the soft drink tax, and the Tax Administration

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1 Act applies to the administration and enforcement of the tax.

2 Section 9. [NEW MATERIAL] SOFT DRINK DIALYSIS FUND

3 CREATED--PURPOSE--ADMINISTRATION.--

4 A. The "soft drink dialysis fund" is created in the
5 state treasury. The fund and income produced by the fund are
6 appropriated to the department of health for expenditure for
7 the purchase of dialysis equipment and training of dialysis
8 equipment operators and shall be held and used solely for that
9 purpose and shall not be used to pay general or special
10 obligations or debts of the state or to fund other programs.
11 The fund shall be administered by the department of health,
12 which shall establish procedures and adopt rules to administer
13 the fund and to originate grants or loans for the purchase of
14 dialysis equipment and the training of dialysis equipment
15 operators. Rules shall include the method to be used to
16 determine eligibility for receipt of grants or loans from the
17 fund. Criteria for awarding grants or loans shall include the
18 existing availability of dialysis and accessibility to dialysis
19 treatment in the local area of the applicant for a grant or
20 loan and shall provide for a preference in awarding grants or
21 loans to impoverished counties.

22 B. Money in the fund shall be invested by the state
23 treasurer as general fund revenues are invested. Money in the
24 fund shall not revert at the end of a fiscal year. The fund
25 shall be expended upon warrants issued by the secretary of

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1 finance and administration upon vouchers signed by the
2 secretary of health.

3 Section 10. A new section of the Tax Administration Act
4 is enacted to read:

5 "[NEW MATERIAL] DISTRIBUTIONS--SOFT DRINK TAX.--Pursuant
6 to the provisions of Section 7-1-6.1 NMSA 1978:

7 A. ninety-six percent of the net receipts from the
8 soft drink tax shall be distributed to the soft drink dialysis
9 fund; and

10 B. four percent of the net receipts from the soft
11 drink tax shall be retained by the department to defray the
12 costs of administering the provisions of the Soft Drink Tax
13 Act."

14 Section 11. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2008.